

**LFC Requester:****Aurora Sanchez**

**AGENCY BILL ANALYSIS  
2016 REGULAR SESSION**

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**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Check all that apply:*

**Original** ☐ **Amendment** ☐  
**Correction** ☐ **Substitute** ☒

**Date** 2/9/2016

**Bill No:** Senate Bill 257

**Sponsor:** Nancy Rodriguez

**Agency Code:** 305

**Short Title:** Convictions in Certain Courts  
of "Adults"

**Person Writing** Jacqueline R. Medina

**Phone:** 222-9000

**Email** Jmedina@nmag.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE****BILL SUMMARY**

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

**Synopsis:**

NMSA 1978, § 31-21-15, provides the procedure for the return of probation violators.

The amendment proposes to replace the term "he" with the term "probationer" in subsections (A) (3) and (C).

The amendment proposes to add the following sentence defining the term "probationer" in subsection (C) of the statute. "For the purposes of this subsection, "probationer" means a person convicted of a crime by a district, metropolitan, magistrate or municipal court."

The proposed amendment to subsection (C), defining the term "probationer" is likely the result of the recent New Mexico Court of Appeals Opinion in *State v. Begay*, 2016-NMCA \_\_, \_\_ P.3d. \_\_ (Jan 13, 2016).

In *Begay*, the New Mexico Court of Appeals ruled that the New Mexico Legislature did not intend for the tolling provision of the Adult Probation and Parole Act, to apply to persons convicted in Magistrate Courts because the statutory definition of the term "adult" is limited to those persons convicted in district courts.

The tolling provision of the Adult Probation and Parole Act, NMSA 1978, § 31-21-15(C), requires a court to determine whether the time from the date of a probation violation to the date of a probation violator's arrest, or any part of it, shall be counted as time served on probation. In other words, the tolling provision enables courts to preclude probationers from earning credit towards probation while they are on absconder /fugitive status.

The amendment adds Section 2. Emergency – It is necessary for the peace, health and safety that this act take effect immediately.

**FISCAL IMPLICATIONS**

None known of.

## **SIGNIFICANT ISSUES**

As a result of *State v. Begay*, persons convicted of crimes and who are placed on probation in Magistrate, Metropolitan, or Municipal courts, will continue to earn credit towards their probation even if they abscond and completely avoid the consequences of their probation.

Prior to *Begay*, courts have been operating under the assumption that the tolling provision applies to all probation absconders.

## **PERFORMANCE IMPLICATIONS**

None known of.

## **ADMINISTRATIVE IMPLICATIONS**

None known of.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

A bill providing the identical definition for the term “probationer” but in Section 31-21-5, has been introduced by Rod Montoya – House Bill 296.

## **TECHNICAL ISSUES**

None known of.

## **OTHER SUBSTANTIVE ISSUES**

None known of.

## **ALTERNATIVES**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Persons convicted of crimes and placed on probation by Magistrate, Metropolitan, or Municipal courts may avoid the consequences and rehabilitative goals of their probation by absconding until the term of their probation ends.

The statute will not refer to “probationers” in a gender neutral manner.

## **AMENDMENTS**

None suggested.